

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

JAMES HAYDEN,

Plaintiff,

v.

2K GAMES, INC. and TAKE-TWO  
INTERACTIVE SOFTWARE, INC. ,

Defendants.

CASE NO. 1:17-cv-02635-CAB

**DECLARATION OF MIRANDA MEANS IN SUPPORT OF DEFENDANTS  
TAKE-TWO INTERACTIVE SOFTWARE, INC. AND 2K GAMES, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

I, Miranda Means, declare as follows:

1. I am an attorney at the law firm of Kirkland & Ellis LLP. I submit this declaration in support of Defendants Take-Two Interactive Software, Inc. and 2K Games, Inc.’s (together, “Take-Two” or “Defendants”) motion for summary judgment.

**Gameplay Video Footage**

2. Attached hereto as **Exhibit 1** is a true and correct copy of gameplay video footage from *NBA 2K16*. This exhibit has been manually lodged with the Court.

3. Attached hereto as **Exhibit 2** is a true and correct copy of gameplay video footage from *NBA 2K17*. This exhibit has been manually lodged with the Court.

4. Attached hereto as **Exhibit 3** is a true and correct copy of gameplay video footage from *NBA 2K18*. This exhibit has been manually lodged with the Court.

5. Attached hereto as **Exhibit 4** is a true and correct copy of gameplay video footage from *NBA 2K19*. This exhibit has been manually lodged with the Court.

6. Attached hereto as **Exhibit 5** is a true and correct copy of gameplay video footage from *NBA 2K20*. This exhibit has been manually lodged with the Court.

**Video Game Discs**

7. Attached hereto as **Exhibit 6** is a true and correct copy of *NBA 2K16* for the Xbox One.

8. Attached hereto as **Exhibit 7** is a true and correct copy of *NBA 2K17* for the Xbox One.

9. Attached hereto as **Exhibit 8** is a true and correct copy of *NBA 2K18* for the Xbox One.

10. Attached hereto as **Exhibit 9** is a true and correct copy of *NBA 2K19* for the Xbox One.

11. Attached hereto as **Exhibit 10** is a true and correct copy of *NBA 2K20* for the PlayStation 4.\*

**Deposition Transcripts**

12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from the transcript of Plaintiff James Hayden's ("Plaintiff") October 30, 2019 deposition.

13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the transcript of Bernardino Tovanche's January 29, 2020 deposition. Upon information and belief, Mr. Tovanche currently works as a tattooist at Focused Tattoos in Cleveland Heights, Ohio.

14. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the transcript of Jonathon Hayden's January 29, 2020 deposition. Upon information and belief, Mr. Jonathon Hayden is Plaintiff's brother and currently works as a tattooist at Focused Tattoos in Euclid, Ohio.

15. Attached hereto as **Exhibit 14** is a true and correct copy of excerpts from the transcript of Jason Argent's January 8, 2020 deposition. At the time of his deposition, Mr. Argent was 2K Games Inc.'s Senior Vice President of Basketball Operations.

16. Attached hereto as **Exhibit 15** is a true and correct copy of excerpts from the transcript of Winnie Yiu Yun Hsiehs's January 10, 2020 deposition. Ms. Hsieh is a Character Artist at Visual Concepts Entertainment.

17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from the transcript of Corie Zhang's January 10, 2020 deposition. Ms. Zhang is a Character Art Producer at Visual Concepts Entertainment.

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\* Should the Court require Xbox One or PlayStation 4 videogame consoles to review the video games referenced here, Take-Two can provide them to the Court upon request.

18. Attached hereto as **Exhibit 17** is a true and correct copy of excerpts from the transcript of Anton Dawson's January 22, 2020 deposition. Mr. Dawson is a studio Art Director at Visual Concepts Entertainment.

19. Attached hereto as **Exhibit 18** is a true and correct copy of excerpts from the transcript of Joel Friesch's January 22, 2020 deposition. Mr. Friesch is an Art Director at Visual Concepts Entertainment.

20. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the transcript of Alfredo Brody's January 23, 2020 deposition. Mr. Brody is a Vice President, Head of Global Sports Marketing, at 2K Games Inc.

21. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the transcript of Jeffrey Thomas's January 24, 2020 deposition. At the time of his deposition, Mr. Thomas was Vice President of Sports Development at Visual Concepts Entertainment.

22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the transcript of Michael Stauffer's January 30, 2020 deposition. Mr. Stauffer is a Production Assistant at Visual Concepts Entertainment.

#### **Discovery Responses**

23. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from Plaintiff's Objections and Responses to Defendants' First Set of Interrogatories, dated June 14, 2019.

24. Attached hereto as **Exhibit 23** is a true and correct copy of excerpts from Defendant Take-Two Interactive Software, Inc.'s Second Amended Objections and Responses to Plaintiff's First Set of Interrogatories, dated October 31, 2019.

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from Plaintiff's Objections and Responses to Defendants' Second Set of Interrogatories, dated October 31, 2019.

26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from Plaintiff's First Supplemental Objections and Responses to Defendants' Second Set of Interrogatories, dated October 7, 2020.

27. Attached hereto as **Exhibit 26** is a true and correct copy of excerpts from Plaintiff's Objections and Responses to Defendants' First Set of Amended Requests for Admission, dated November 29, 2019.

28. Attached hereto as **Exhibit 27** is a true and correct copy excerpts from Plaintiff's Objections and Responses to Defendants' Second Set of Requests for Admission, dated October 31, 2019.

29. Attached hereto as **Exhibit 28** is a true and correct copy of excerpts from Plaintiff's Objections and Responses to Defendants' First Set of Requests for Admission, dated September 27, 2019.

#### **Expert Discovery**

30. Attached hereto as **Exhibit 29** is a true and correct copy of the Rebuttal Expert Report of Dr. Justin Lenzo, dated July 1, 2021.

31. Attached hereto as **Exhibit 30** is a true and correct copy of excerpts from the transcript of Dr. Justin Lenzo's August 17, 2021 deposition.

32. Attached hereto as **Exhibit 31** is a true and correct copy of excerpts from the transcript of Michal A. Malkiewicz's August 19, 2021 deposition.

33. Attached hereto as **Exhibit 32** is a true and correct copy of excerpts from the transcript of Dr. Ian Bogost's August 30, 2021 deposition.

**Additional Documents**

34. Attached hereto as **Exhibit 33** is a true and correct copy of a compilation of the following webpages:

- "LeBron James," NBA, [https://www.nba.com/player/2544/lebron\\_james](https://www.nba.com/player/2544/lebron_james)
- "Danny Green," NBA, [https://www.nba.com/player/201980/danny\\_green](https://www.nba.com/player/201980/danny_green)
- "Tristan Thompson," NBA, [https://www.nba.com/player/202684/tristan\\_thompson](https://www.nba.com/player/202684/tristan_thompson)

35. Attached hereto as **Exhibit 34** is a true and correct copy of a document bearing Bates Number TAKE-TWO\_00001260, produced by Defendants in this matter, and labeled as Exhibit 14 to the deposition of Jason Argent.

36. Attached hereto as **Exhibit 35** is a true and correct copy of a document bearing Bates Number TAKE-TWO-00001149, produced by Defendants in this matter, and labeled as Exhibit 15 to the deposition of Jason Argent.

37. Attached hereto as **Exhibit 36** are true and correct copies of documents bearing Bates Numbers HAYDEN\_000851, HAYDEN\_001657, HAYDEN\_000751, HAYDEN\_000230, HAYDEN\_000348, HAYDEN\_000225, HAYDEN\_000018, HAYDEN\_000481, and HAYDEN\_000614, produced by Plaintiff in this matter, and labeled as Exhibits 26, 31, 33, 35, 36, 38, 39, 41 and 42, respectively, to the deposition of James Hayden.

38. Attached hereto as **Exhibit 37** is a true and correct copy of a document bearing Bates Number HAYDEN\_001944, produced by Plaintiff in this matter, and labeled as Exhibit 5 to the deposition of James Hayden.

39. Attached hereto as **Exhibit 38** is a true and correct copy of U.S. Copyright Office Certificate of Registration No. 3,429,884, which was labeled as Exhibit 7 to the deposition of James Hayden.

40. Attached hereto as **Exhibit 39** is a true and correct copy of Plaintiff's copyright applications, which were labeled as Exhibits 12–17 to the deposition of James Hayden.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 25th day of October, 2021.

/s/ Miranda Means

Miranda Means